

**AMENDED NOTICE OF PROPOSED AMENDMENT AND
REPEAL OF REGULATIONS AND
STATEMENT OF REASONS**

**California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
and
Division 5. Local Agency Personnel Standards**

DATE: December 23, 2002

TO: ALL STATE AND LOCAL AGENCIES, EMPLOYEE
ORGANIZATIONS, AND MEMBERS OF THE GOVERNOR'S
CABINET

SUBJECT: Proposed Amendment to California Code of Regulations,
Title 2 (2CCR) § 547.80 and Repeal of 2CCR § 547.81; and
Proposed Amendment to Local Agency Personnel Standards,
2CCR §§ 17030, 17111, 17112, 17151 and Repeal of §17434,
Regulations Related to Equal Employment Opportunity
Activities in State and Local Agencies

**NOTE: THIS NOTICE INDICATES A CHANGE IN THE PLACE OF THE
PUBLIC HEARING. NO OTHER CHANGES HAVE BEEN MADE TO THE
NOTICE OR TO THE ATTACHED TEXT OF THE PROPOSED REGULATIONS.**

AUTHORITY:

Under the authority established in Government Code § 18701, the State Personnel Board (SPB) proposes to amend § 547.80 and repeal § 547.81 under Title 2, Division 1 of the California Code of Regulations.

Under the authority established in Government Code § 19801, SPB proposes to amend §§ 17030, 17111, 17112, and 17151; and repeal § 17434, under Title 2, Division 5 of the California Code of Regulations.

REFERENCE:

These regulations implement, interpret, and/or make specific Government Code §§ 19790 through 19799 and Government Code §§ 19800 through 19810.

PUBLIC HEARING:

Date and Time: January 7, 2003, from 9:30 to 10:00 a.m.

Place: State Personnel Board
801 Capitol Mall, Auditorium
Sacramento, CA 95814

Purpose: To receive oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The written public comment period will close January 6, 2003, at 5:00 p.m. This comment period allows time for SPB staff to provide copies of any written comments to the five-member State Personnel Board (Board) for their consideration at the time of the hearing. Any person may submit written comments about the proposed regulatory changes at the hearing. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the forty-five (45) day comment period.

For 2CCR §§ 547.80 and 547.81, direct written comments to Ted Edwards at the State Personnel Board, 801 Capitol Mall, MS 12, Sacramento, CA 95814, or to tedwards@spb.ca.gov, or fax comments to his attention at (916) 651-9016.

For 2CCR §§ 17030, 17111, 17112, 17151, and 17434, direct written comments to Susan Helland at Cooperative Personnel Services, Local Government Services, 241 Lathrop Way, Sacramento, CA 95815, or to susanh@cps.ca.gov, or fax comments to her attention at (916) 648-1211.

**AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/
CONTACT PERSONS:**

Copies of the express terms of each proposed action, Statement of Reasons, and all of the information upon which each proposal is based are available upon request from SPB's contact person. The rulemaking file and related court decision documents are available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed actions should be directed to the appropriate contact person listed above. The backup agency contact for either proposal is Steve Unger at the State Personnel Board, (916) 651-8461 or TDD (916) 653-1498. Questions regarding the regulatory process in conjunction with these proposals should be directed to the backup contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text of either proposal as a result of comments received during the public comment period, SPB will make the full text of the changed regulation(s) available for at least fifteen (15) days before the date the regulation(s) is permanently adopted.

DOCUMENTS RELIED UPON:

Connerly v. State Personnel Board (2001) 92 Cal. App. 4th 16.

Hazelwood School District v. United States (1977), 433 U.S. 299, at 308, n 14.

DOCUMENT INCORPORATED BY REFERENCE:

"Interim Guidelines for Conducting the Annual Analysis of the State Work Force," State Personnel Board, March 2002. This document is available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814, and may also be obtained by contacting Ted Edwards at the State Personnel Board, 801 Capitol Mall, MS 12, Sacramento, CA 95814, or at tedwards@spb.ca.gov.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Government Code § 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (Government Code §§ 18500 et seq.).

Government Code § 19705 authorizes the Board to collect, on a voluntary basis, from applicants for State civil service employment, minority and gender data to assess the fairness of the selection process and to the planning and monitoring of affirmative action efforts.

Government Code § 11092.5 requires the State to maintain statistical data of minority groups.

Government Code § 18523 defines "class" as a group of positions sufficiently similar with respect to duties and responsibilities that the same title and test for fitness may be used for them, the same minimum qualifications may be required and the same schedule of compensation may be applied.

Government Code § 19702.1 requires that hiring and promotions in the civil service conform to the Federal Civil Rights Act of 1964 (42 USC §§ 2000e-2 et seq.). Title VII of the Act prohibits practices, procedures, or policies that have

an adverse impact on employees or applicants for employment unless they are justified by business necessity. It also prescribes practices which “tend to deprive” persons of equal employment opportunity, such as preferential treatment for one group of persons over another.

Government Code §§ 19790 et seq. enumerate the requirements of the State Civil Service Affirmative Action Program, including the requirement that State agencies establish goals and timetables to eliminate identified underutilization in employment. Government Code § 19792 specifically authorizes the Board to develop, implement, and maintain affirmative action and equal employment opportunity guidelines, to include maintaining statistical information to determine the underutilization of minorities and women.

Government Code §§ 19800 through 19810 authorize SPB to establish and maintain merit-based personnel standards, by regulation, for local government agencies receiving funds for programs and services established under the Social Security Act, Public Health Service Act, and Federal Civil Defense Act. The regulations promulgated by the Board for the local agency merit systems are known as the Local Agency Personnel Standards (LAPS).

The U.S. Supreme Court held in *Hazelwood School District v. United States* that gross statistical disparities between the composition of the employer’s work force and that of the relevant labor force constitutes a prima facie case of a pattern or practice of employment discrimination under Title VII of the Civil Rights Act of 1964. The court held that once a prima facie case was established by statistical work force disparities, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for its action.

The California Third District Court of Appeal issued a published decision in *Connerly v. State Personnel Board* which concluded that establishing employment goals violates principles of equal protection as well as the California Constitution as amended by Proposition 209. The court upheld those statutory provisions that require the collection and reporting of underutilization of minorities and women in State agencies to monitor employment practices and, under limited circumstances, upheld the provision permitting SPB to adjust layoff based on a finding of past discrimination.

The proposed regulatory changes respond to the findings of court decisions concerning equal employment opportunity programs for State agencies and local merit system agencies. The following summarizes the proposed changes:

- Updates the terminology and definitions used in connection with work force data collection and evaluation of equal employment opportunity within the State civil service and local agency merit systems.
- Repeals State civil service regulation, 2CCR § 547.81, that provides guidelines for the establishment of equal employment opportunity goals and timetables process for minorities and women.
- Repeals local agency merit system regulation, 2CCR § 17434, and deletes any current text that allows special recruitment for underrepresented groups.

IMPACT ON SMALL BUSINESSES:

The proposed regulations will not impact small businesses. The proposed amendments would affect only State and applicable local agencies and their employees.

LOCAL MANDATE:

The proposed regulatory action requires those local agencies receiving funds from State or federal government as defined under Government Code § 19705 to remain in compliance with federal law. This action has no mandate upon local agencies or school districts and, therefore, requires no reimbursement pursuant to Government Code § 17561.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Saving to State Agencies

Any additional costs or savings that the proposed amendment may cause for state and applicable local agencies will be negligible.

Impact on Housing Costs

The proposal will not affect housing costs.

Costs or Savings in Federal Funding to the State

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

The proposals do not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed actions.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

SPB has determined that the proposed actions will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS OR BUSINESSES:

The proposals will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

DETERMINATION:

SPB must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SPB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

FINAL STATEMENT OF REASONS:

Upon completion, copies of the Final Statement of Reasons for each proposal may be obtained from the appropriate contact person or the backup contact person.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEBSITE:

The text of the proposed amendments in underline and strikeout, as well as the Notice of Proposed Amendment and Repeal of Regulations and Statement of Reasons, will be on SPB's Web site at www.spb.ca.gov.

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STATEMENT OF REASONS:

The Board, by its authority to promulgate rules under Government Code §§ 18701 and 19801, proposes to revise existing regulations to comply with case law. The changes modify terminology and guidelines for work force data collection and evaluation of equal employment opportunity and related activities within State civil service and local agency merit system.

Mike Willihnganz
Chief, Policy Division

Attachment: Text of Proposed Regulations

**REGULATIONS CONCERNING
THE STATE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM**

**All new text is indicated by underline. All deleted text
is indicated by strikeout.**

Subchapter 1.7 Equal Employment Opportunity ~~Goals~~ Program

**Article 1. ~~Equal Employment Opportunity Goals for Minorities and Women~~ State
Work Force Data Collection and Evaluation**

§ 547.80. Definitions.

~~For purposes of this Article:~~ The following definitions shall be used for work force data collection and evaluation of equal employment opportunity within state civil service, including those activities related to layoff:

- (a) "Class" means a group of positions as defined in Government Code Section 18523.
- ~~(b) "Employment Goal" means a projected level of achievement in the percentage representation of minorities and women which takes into consideration their availability in the relevant labor force and the appointing authority's ability to hire.~~
- ~~(c)~~ (b) "Minority Group" "Racial/Ethnic Group" includes persons who are members of one of the following racial/ethnic groups: American Indian/Native American, Asian, Black/African American, Filipino, Hispanic, and Pacific Islander, and White. These groups are defined as follows:
 - (1) "American Indian/Native American" means any person who is a member of an American Indian Tribe or band recognized by the Federal Bureau of Indian Affairs, or has at least one-quarter American Indian blood quantum of tribes or bands indigenous to the United States or Canada.
 - (2) "Asian" means any person whose origin is the Far East, Southeast Asian or the Indian subcontinent and includes, for example, China, Japan, and Korea.
 - (3) "Black/African American" means any person whose origin is any of the Black racial groups of Africa.
 - (4) "Filipino" means any person whose origin is the Philippine Islands.
 - (5) "Hispanic" means any person whose origin is Mexico, Puerto Rico, Cuba, Spain, or the Spanish-speaking countries of Central or South America. It does not include

persons of Portuguese or Brazilian origin, or persons who acquired a Spanish surname;
(6) "Pacific Islander" means any person whose origin is in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(7) "White" means any person whose origin is Caucasoid.

~~(d)~~ (c) "Occupational Group" means a group of jobs or classes that includes the entry level, other working levels, and supervisory levels within the same general occupational field of work;

~~(e)~~ (d) "Relevant Labor Force" means the pool of individuals who possess the requisite qualifications for the classification or occupational group within the geographic area in which the agency can reasonably expect to recruit.

(f) (e) "Statistically Significant" means the degree of underutilization is equal to or greater than the .05 level of significance using the one-tailed Z Test method of statistical analysis outlined in Appendix 4 of the ~~Recommended Procedures For Establishing Equal Employment Opportunity Goals and Timetables, revised March 1999,~~ Interim Guidelines for Conducting the Annual Analysis of the State Work Force, issued March 2002, by the State Personnel Board. This document is hereby incorporated by reference in its entirety. Using this methodology, a computed Z value of 1.65 or greater is sufficient to conclude that any underutilization is statistically significant.

~~(g)~~ "Timetable" means an estimate of the time required to meet specific employment goals.

~~(h)~~ (f) "Underutilization" means having fewer persons of a particular race/ethnic or gender group in an occupation or at a level in a department than would reasonably be expected by their availability in the relevant labor force.

~~(i)~~ "White" means any person whose origin is Caucasoid.

~~(j)~~ (g) "Work Force" means incumbents in full-time and other-than-full-time positions in the state civil service employed by the appointing authority.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092.5, 18523, 19702.1, 19790, ~~and 19791 and 19792,~~ Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; and "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," *Federal Register*, October 30, 1997; Connerly v. State Personnel Bd. (2001) 92 Cal. App. 4th 16; and Hazelwood School District v. United States (1977), 433 U.S. 299, at 308, n 14.

~~§547.81. Establishment of Annual Equal Employment Opportunity Goals for Minorities and Women.~~

~~Each appointing authority is responsible for annually establishing or modifying equal employment opportunity goals and timetables for civil service classes or occupational groups where statistically significant underutilization of minority group members or women exist. Annual employment goals shall be based on all of the following:~~

~~(a) — A work force analysis that identifies the classes, occupational groups, relevant~~

~~geographic recruitment area and state work force information as specified in the Work Force Analysis Section, and the referenced Appendices in that section, of the Recommended Procedures For Establishing Equal Employment Opportunity Goals and Timetables (Procedures), revised March 1999, by the State Personnel Board. This document is hereby incorporated by reference in its entirety.~~

~~(b) — An availability analysis that identifies the options for measuring relevant labor force availability, evaluates the options for measuring the composition of the relevant labor force, and identifies the data for setting entry and promotional goals as specified in the Availability Analysis Section, and the referenced Appendices in that section, of the Procedures.~~

~~(c) — A utilization analysis that compares the state work force representation with the relevant labor force as specified in the Utilization Analysis Section, and the referenced Appendices in that section, of the Procedures. If the representation of a minority group or of women is greater in the relevant labor force than in the state work force, there is an underutilization. An underutilization may be identified as a percentage and/or the nearest whole number of employees that would be required to eliminate the underutilization. Appointing authorities shall establish employment goals for any group that has a statistically significant underutilization.~~

~~(d) — The appointing authority's expected number of employment opportunities in entry classes, within the appropriate relevant geographic area, during the year. In determining this, consideration shall be given to such factors as anticipated turnover, new positions to be established, budget reductions, layoffs, hiring freezes, and other hiring constraints.~~

~~(e) — The availability of qualified candidates to fill expected job openings. In determining this, consideration shall be given to such factors as the size and composition of current eligible lists; anticipated new recruitment efforts; examinations scheduled; eligible lists established during the year; and transfer and reinstatement opportunities.~~

~~(f) — The number of years that are anticipated to achieve any employment goal required in (c).~~

~~NOTE: Authority cited: Section 18701, Government Code.~~

~~Reference: Sections 11092.5, 19702.1 and 19790, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); and *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989).~~

REGULATIONS CONCERNING THE LOCAL AGENCY MERIT SYSTEM EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

TITLE 2. Administration Division 5. Local Agency Personnel Standards

§17030. Definitions.

The following definitions apply to both Chapter 1 and Chapter 2 of the Local Agency Personnel Standards. Where more appropriate, definitions are incorporated into the text of a regulation.

- (a) Appointing Authority: Local agency legislative body or a department head (or their representative) having authority to appoint and to remove employees from employment.
- (b) Career Service: All positions in a local agency that are covered by these rules. See Section 17200 for identification of covered and exempted positions.
- (c) Certification: Forwarding of names of eligibles from an appropriate eligible list or lists to the appointing authority.
- (d) Discrimination: The adverse effects of a personnel management decision on employees or applicants based on race, color, sex, age, handicap disability, religious creed, national origin, ancestry, marital status, or other category identified by statute, when such decision is not based on job-related criteria.
- (e) Executive Officer: The individual appointed by the California State Personnel Board to serve as its executive officer. Under the provisions of Government Code Section 18654, any power, duty, or jurisdiction which the Board may legally delegate is presumed to have been delegated to the executive officer unless the Board has formally reserved the same for itself.
- (f) Federal Standards: Those standards contained in the "STANDARDS FOR A MERIT SYSTEM OF PERSONNEL ADMINISTRATION" which are filed in regulatory form in the Consolidated Federal Register (CFR) under Title 5, Part 900, Subpart F (Vol. 44, No. 34, Friday, February 16, 1979) or such future revisions which become applicable.
- (g) Impartial Process: A dispute resolution procedure wherein a decision is rendered by a group or individual capable of making an objective judgment free of favor or prejudice. Such group or individual may include but is not limited to the following:
 - (1) A "civil service commission" established substantially as set forth in Government Code Sections 31110 through 31113, inclusive, provided no member serves in any other capacity in the local agency; and
 - (2) Any other group or individual selected:

- (A) By mutual agreement of the parties; or
- (B) By some other objective method which will ensure impartiality. Examples of those who might satisfy these latter conditions are ad hoc panels, State Hearing Officers, and professional arbiters.
- (h) Local Agency: As defined in Government Code Section 19810, local agency means any city, county, city and county, district, or other subdivision of the state or any independent instrumentality thereof.
- (i) Permanent Appointment: The status of an employee who has successfully completed a probationary period.
- (j) Permanent Status: The employment condition in which an employee has rights in the career service and in a class. Upon satisfactory completion of the probationary period following initial appointment, an employee gains permanent status in the career service, and is subject to removal from the career service only for cause, curtailment of work or lack of funds. Upon satisfactory completion of the probationary period following promotion within the career service, an employee gains permanent status in the class to which promoted, and is subject to removal from the class only for cause, curtailment of work or lack of funds.
- (k) Personnel Plan: The personnel plan consists of all documents governing employment in the departments of a local agency administering state and federally funded programs. These include, but are not necessarily restricted to: charter provisions; salary, position budget, and enabling ordinances; rules and regulations; class specifications, examination announcements, and related materials that set forth standards; employee-management memoranda of understanding; and such other reports, minute orders, administrative rules, and procedural instructions that may be specifically requested by the State Personnel Board Executive Officer and necessary to establish a merit system for its grant-in-aid departments in accordance with these standards.
- (l) Position: Any office or employment (whether part time or ~~fulltime~~ full-time, temporary or permanent, occupied or vacant) calling for the performance of specified and related duties.
- (m) Probationary Period: The time limited period of paid service which is an extension of the examination process required before an employee gains permanent status.
- (n) Status: The condition of an employee's appointment, such as provisional, probationary, permanent, or as defined in the personnel rules adopted by the governing board of a local agency.
- (o) Suspension: An enforced leave of absence for disciplinary purposes or pending investigation of charges made against an employee.
- (p) Statistically Significant: the degree of underutilization is equal to or greater than the .05 level of significance using the one-tailed Z Test method of statistical analysis outlined in Appendix 4 of the *Interim Guidelines for Conducting the Annual Analysis of the State Work Force*, issued March 2002, by the State Personnel Board. Using this methodology, a computed Z value of 1.65 or greater is sufficient to conclude that any underutilization is statistically significant.

(q) Underutilization: Having fewer persons of a particular race/ethnic or gender group in an occupation or at a level in a department than would reasonably be expected by their availability in the relevant labor force.

NOTE: Authority cited: Sections 19801, Government Code.

Reference: Sections 19800-19810, Government Code; Connerly v. State Personnel Bd. (2001) 92 Cal. App. 4th 16; and Hazelwood School District v. United States (1977), 433 U.S. 299, at 308, n 14.

(Section 17110 is unchanged.)

§17111. Recruitment.

Recruitment efforts ~~will~~ shall be planned and carried out in a manner that assures equal employment opportunity and open competition for initial career service appointment for all job applicants. Basic recruitment efforts for entry into the career service shall include posting of examination announcements in appropriate public places ~~for a sufficient length of time~~ for a minimum of five working days to ~~insure~~ ensure that an adequate number of candidates will apply.

~~Additional special recruitment efforts shall be made to attract minorities, women and other groups that are substantially underrepresented in the agency's work force to help assure they will be among the candidates from whom appointments are made.~~

NOTE: Authority cited: Section 19801, Government Code.

Reference: Sections 19802 and 19803, Government Code; Connerly v. State Personnel Bd. (2001) 92 Cal. App. 4th 16; and Hazelwood School District v. United States (1977), 433 U.S. 299, at 308, n 14.

§17112. Selection.

(a) Selection procedures, including appropriate ranking for entry to the career service, shall be job related and shall maximize to the extent practicable validity, reliability and objectivity. The Uniform Guidelines on Employee Selection Procedures, as published in the Consolidated Federal Register (at 5 CFR, 900, Subpart F, Appendix B), are incorporated into these rules.

(b) Competition for appropriate positions may be limited to facilitate the employment of ~~the handicapped~~ persons with a disability or participants in employment or rehabilitation programs authorized by Congress or the California Legislature.

(c) Appointments to permanent career service positions shall be made through selection from appropriately ranked eligible lists. Appointment procedures may not allow appointment either beyond the top ten eligibles or the top ten percent of eligibles or the top predetermined score group of those on an eligible list who are willing to accept the conditions of employment.

(d) Permanent appointment for entry to the career service will be contingent upon satisfactory performance by the employee during a reasonable, time-limited probationary period. As a general rule, probationary periods may not exceed one year.

(e) ~~Nonstatus~~ Non-status appointments shall not be used as a way of defeating the purpose of the career service and shall have a reasonable time limit. As a general rule, reasonable time limit is one year. If lists of eligibles are available, they shall be used for filling temporary positions. Short-term, emergency appointments may be made without regard to the other provisions of this section, to provide for maintenance of essential services in an emergency situation where normal procedures are not practical.

NOTE: Authority cited: Section 19801, Government Code.

Reference: Sections 19802 and 19803, Government Code; Connerly v. State Personnel Bd. (2001) 92 Cal. App. 4th 16; and Hazelwood School District v. United States (1977), 433 U.S. 299, at 308, n 14.

(Sections 17113-17150 are unchanged.)

§17151. Equal Employment Opportunity ~~and Affirmative Action~~.

(a) Equal opportunity shall exist in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of employment.

(b) Prohibitions against discrimination consistent with the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000e et seq.), the Rehabilitation Act of 1973 as amended (29 U.S.C. § 791 et seq.), the Age Discrimination in Employment Act of 1967 as amended (29 U.S.C. 621 et seq.), the Equal Pay Act of 1963 (29 U.S.C. § 206 (d)(1)) and other relevant statutes shall be established and enforced.

(c) ~~Affirmative action~~ Equal employment opportunity programs shall be developed and implemented to include the following:

(1) Removal of artificial barriers to equal employment opportunity.

(2) Assessment of the local agency's work force, ~~and including a comparison of the local agency's work force composition with the relevant labor force composition~~. Records of such assessments and comparisons shall be provided annually and at such other time as required to the State Personnel Board Executive Officer.

(3) Where there is statistically significant underutilization of any group based on race, ethnicity or gender as shown by the work force-labor force comparison, the local agency shall:

~~Develop goals and timetables formulated to correct the disparity or other problems identified in the annual assessment of work force.~~

Develop and implement written recruitment plans which will ~~include affirmative recruitment of~~ ensure all-inclusive outreach and equal opportunity for all identified underutilized groups. Copies of such recruitment plans shall be

made available, ~~on~~ upon request, to the State Personnel Board Executive Officer.

~~Conduct examinations for target classes in a manner that includes all of the following: Written applicant tracking reports; giving consideration to suspending or modifying examinations at key points when applicant tracking reports show little likelihood target group hires can be made, and taking steps at those points to improve representation of the target groups within the overall candidate group; written evaluation reports at the end of each target examination which show the extent to which the examination met its goals. Copies of required reports shall be made available, on request, to the State Personnel Board Executive Officer.~~

Assess selection processes to ensure that they are based solely on job-related criteria and are free of illegal adverse impact as defined in the Uniform Guidelines on Employee Selection Procedures (Guidelines), incorporated in Section 17112, against any group. Such assessments shall be conducted consistent with procedures outlined in the Guidelines. Where illegal adverse impact is found, the local agency shall identify the cause and take appropriate corrective action on a timely basis.

~~Whether or not "underutilization" exists will be determined on the basis of the relevant factors in each individual case. Factors to be considered will include the size of the department work force, the number of under-represented group members available in the relevant labor force, the number of underrepresented group members needed to reach general and occupational parity for each group.~~

Comply with all equal employment opportunity requirements mandated by federal agencies as a condition for obtaining or maintaining federal funding of programs.

NOTE: Authority cited: Section 19801, Government Code.

Reference: Sections 19802 and 19803, Government Code; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, at 308, n 14.

(Sections 17152-17432 are unchanged.)

~~§17434. Special Recruitment.~~

~~When work force analysis indicates significant disparity, special efforts may be required by the State Personnel Board Executive Officer to recruit underrepresented groups to compete in examinations.~~

~~NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.~~